



## Mississippi Department of Employment Security

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### **SUTA Dumping**

#### **Manipulating Unemployment Tax Rates To Pay Less Tax.**

SUTA dumping is a scheme by which some employers manipulate the state Unemployment Insurance Laws in order to pay a lower UI tax rate. The scheme compromises the integrity of the UI tax system. It creates a distinct competitive disadvantage to employers who comply with the law by placing a higher tax rate on them in order to maintain the trust fund balance.

The main methods of SUTA dumping are accomplished when employers shift the charges from their individual experience to the general experience of the whole unemployment insurance fund. This spreads the costs that would normally be allocated to an individual account, to the accounts of all experience rated employers.

Although only a small number of employers are involved in SUTA dumping, all employers are impacted. Therefore Public Law No. 108-295, the "SUTA Dumping Prevention Act of 2004" was signed by the President on August 9, 2004. Mississippi's law was changed in the 2005 Legislative Session to address this illegal practice. Violators will face stiff fines. Employers who participate may be fined up to \$10,000 for each incident and may be imprisoned for up to five years or may have their tax rate increased to a maximum of 7.4% (2 percent above the statutory maximum). Individuals who are not employers but participate in this practice (accountants, attorneys, etc ;) may be fined up to \$5,000 for each incident.

See [Section 71-5-355. \(3\)](#) of the Mississippi Department of Employment Security Law for more information regarding SUTA dumping.

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## Section 71-5-355. (3)

Notwithstanding any other provision of law, the following shall apply regarding assignment of rates and transfers of experience:

(a) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated and made effective on January 1 of the year following the transfer occurred.

(b) Whenever a person who is not an employer or an employing unit under this Chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business shall not be transferred to such person if the Department finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, such a person shall be assigned the new employer rate under Section 71-5-353. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the Department shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(c) (1) If a person knowingly violates or attempts to violate subsections (a) and (b) or any other provision of this Chapter related to determining the assignment of a contribution

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rate, or if a person knowingly advises another person in a way that results in a violation of such provision, the person shall be subject to the following penalties:

(A) If the person is an employer, then such employer shall be assigned the highest rate assignable under this Chapter for the rate year during which such violation or attempted violation occurred and the three (3) rate years immediately following this rate year. However, if the person's business is already at such highest rate for any year, or if the amount of increase in the person's rate would be less than two percent (2%) for such year, then a penalty rate of contributions of two percent (2%) of taxable wages shall be imposed for such year. The penalty rate will apply to the successor business as well as the related entity from which the employees were transferred in an effort to obtain a lower rate of contributions.

(B) If the person is not an employer, such person shall be subject to a civil money penalty of not more than Five Thousand Dollars (\$5,000.) Each such transaction for which advice was given and each occurrence or reoccurrence after notification being given by the Department shall be a separate offense and punishable by a separate penalty. Any such fine shall be deposited in the penalty and interest account established under Section 71-5-114.

(2) For purposes of this section, the term "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(3) For purposes of this section, the term "violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.

(4) In addition to the penalty imposed by paragraph (1), any violation of this section may be punishable by a fine not more than Ten Thousand Dollars (\$10,000.00) or by

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imprisonment for not more than five (5) years, or by both such fine and imprisonment. This section shall prohibit prosecution under any other criminal statute of this state.

(d) The Department shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

(e) For purposes of this section – (1) “Person” has the meaning given such term by Section 7701(a)(1) of the Internal Revenue Code of 1986, and (2) “Trade of business” shall include the employer’s workforce.

(f) This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

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